

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WORLDWIDE FUN LTD. and SMILING
ALBINO LTD.,

Plaintiffs,

-against-

SANUK ENTERPRISES, INC., KENNETH FISH
d/b/a ABSOLUTE TRAVEL and GUY CHIRICO,

Defendants.

Civil Action
No. 1:17-cv-3418

**DEFENDANT KENNETH FISH'S RESPONSE TO
PLAINTIFFS' STATEMENT OF UNDISPUTED
FACTS PURSUANT TO LOCAL CIVIL RULE 56.1**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, Defendant Kenneth Fish respectfully submits this response to Plaintiffs' Statement of Undisputed Facts Pursuant to Local Civil Rule 56.1 (Dkt. No. 69).

1. Fish is a resident of the County, City and State of New York. Fish Dep.¹ 5:6-8.

Response: Admitted by Defendant Kenneth Fish.

2. Fish founded Sanuk Enterprises, Inc. ("Sanuk") in July of 1989. Fish Dep. 11:7-8.

Response: Admitted by Defendant Kenneth Fish.

3. Sanuk was incorporated in New York. Fish Dep. 11:7-8.

Response: Admitted by Defendant Kenneth Fish.

4. Fish is the sole owner of Sanuk. Fish Dep. 91:19-20.

Response: Admitted by Defendant Kenneth Fish.

¹ "Fish Dep." refers to the deposition of Kenneth Fish taken in this matter on December 17, 2017, Exhibit "A" to Plaintiffs' Statement of Undisputed Facts Pursuant to Local Civil Rule 56.1.

5. Sanuk was a travel company which planned customized luxury travel tours for clients in New York. Fish Dep. 24:10-25.

Response: Admitted by Defendant Kenneth Fish.

6. Smiling Albino is a luxury travel tour company based in Thailand. Fraser Affidavit, Paragraph 3.

Response: Admitted by Defendant Kenneth Fish.

7. Sanuk entered into an agreement with Smiling Albino for Smiling Albino to provide travel services for Sanuk's clients. Exhibit D.

Response: Exhibit D was not signed by the parties, but Defendant Kenneth Fish admits that it represents generally the terms under which the parties operated.

8. Sanuk booked travel tours and services for their clients with Smiling Albino. Fish Dep. 22:14-25.

Response: Admitted by Defendant Kenneth Fish.

9. Under the agreement, Sanuk was required to remit payment to Smiling Albino after Sanuk's clients received services from Smiling Albino. Exhibit D

Response: Exhibit D was not signed by the parties, but Defendant Kenneth Fish admits that it represents generally the terms under which the parties operated.

10. Smiling Albino tendered invoices to Defendants for payment for providing these services to Defendants' clients. Exhibit E

Response: Admitted by Defendant Kenneth Fish.

11. Sanuk made multiple untimely or incomplete payments in 2016. Exhibit F, Fish Dep. 153:3-25.

Response: Admitted by Defendant Kenneth Fish.

12. Fish sent emails to Smiling Albino with proposed payment plans to pay Sanuk's debts to Smiling Albino.

Response: Admits that in his capacity as President of Sanuk, Defendant Kenneth Fish sent payment proposals to Plaintiffs in emails.

13. Fish sent payments from his personal financial accounts to Smiling Albino for some of the outstanding debt. Exhibit F, Fish Dep. 166:2-15.

Response: Admits that in order to speed up payments, and upon the consent of Plaintiffs, some payments due from Sanuk were from Defendant Kenneth Fish's personal account as reflected in the ledger annexed as Exhibit "B" to his Affidavit in Opposition to Plaintiffs' Motion for Partial Summary Judgment, sworn to the 20th day of February, 2018. See generally Paragraph "37" to said Affidavit in Opposition and Exhibit "J" to said Affidavit in Opposition in regard to Plaintiffs' consent; see also Exhibit "G" to said Affidavit in Opposition in regard to the accounting records for such payments.

14. In February 2017, Sanuk and Fish stopped remitting payments to Smiling Albino entirely. Fish Dep. 159:2-15.

Response: Admitted by Defendant Kenneth Fish except for one payment sent on March 1, 2017. See Exhibit "B" annexed to Kenneth Fish Affidavit in Opposition to Plaintiffs' Motion for Partial Summary Judgment, sworn to the 20th day of February, 2018.

15. Sanuk's outstanding balance to Smiling Albino was \$368,829.91 when Sanuk ceased operations. Exhibit H

Response: Admitted by Defendant Kenneth Fish.

DATED: February 22, 2018

Respectfully submitted,

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